* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 458/2006

Reserved on : April 27, 2007
Date of decision : May 22, 2007

ASHOTUSH SHARMA ..... Petitioner
Through Mr. N.K. Sharma, Advocate

versus

C.B.I. ..... Respondent
Through Mr. R.M. Tewari

**CORAM:**
**Mr. Justice S. Ravindra Bhat**

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**Mr. Justice S. Ravindra Bhat**

**1.** The question which arises for consideration in this revision petition is whether the learned Special Judge took cognizance of the case on 13.7.2005. The impugned order held in the negative and turned down an application by the petitioner accused.

2. According to the allegations levelled, the petitioner, a Drug Inspector, had visited the wholesale Chemist shop of the complainant and noticed some deficiencies which led to preparation of a memo, listing those deficiencies. It was

alleged that the petitioner demanded Rs. 5,000/- as a bribe. On the basis of the complaint made subsequently, it was alleged that the complainant contacted the petitioner again and a conversation between the two was recorded. It was further alleged that at the behest of the petitioner, money was handed over to one Sh. Sanjeev Garg, which was later recovered. The petitioner was arrested and thereafter admitted to regular bail on 13.5.2005 when the court required him not to leave Delhi. This condition was modified on 13.7.2005 when the Court permitted the petitioner to leave Delhi after intimating the Central Bureau of Investigation (CBI). On that date, i.e 13.7.2005, the petitioner was present in the Court. The court made the following order:

> *"13.7.2005*
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> *Pr. Inspector Richpal Singh present*
> *Defence counsel Sh. A.K. Bansal present*
> *Accused is also present.*
> *Charge-sheet filed. Case be checked and registered. It is stated that sanction in this case has not yet been accorded. I.O. States that it will take two months. Case is therefore, fixed for supply of copy to 19.10.2005. Copy of this order be furnished to the accused, free of cost.*
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> *Sd. ASJ/13/07/2005"*

3. On 10.8.2005, the petitioner moved an application contending that cognizance had been taken by the said order dated 13.7.2005 without filing of a sanction and, therefore, he was entitled to be discharged. The application was

resisted by the CBI which submitted that no cognizance had been taken since the petitioner accused had appeared before the court of his own accord, and also due to the fact that the Inquiry Officer had mentioned that two further months were required to obtain sanction. The Court after hearing parties rejected the application.

4. Mr. N.K. Sharma, learned counsel contended that a fair reading of the order dated 13.7.2005 shows that the Court had indeed taken cognizance as was evident from its requiring the case to be checked and registered and posting the matter further on 19.10.2005 for supply of copies. Since all this happened in the presence of the petitioner, at that stage, the Court must be deemed to have taken cognizance without existence of valid sanction and, therefore, the entire proceedings were vitiated.

5. Reliance was placed upon the judgments reported as *Ajit Kumar Palit vs. State of West Bengal and Anr.,* 1963 (1) Cri.L.J. 797; Devarap*alli Laxminarayan Reddy & Ors. vs. V. Narayana Reddy & Ors.,* 1976 Crl.L.J. 1361; *Satya Narayan Musadi and Ors. vs. State of Bihar*, 1980 Crl. L. J. 277; *Manoranjan Prasad Choudhary vs. State of Bihar,* 2004 SCC(Cri) 1213; *R.S. Nayak vs. A.R. Antulay,* AIR 1984 SC 613 for the submission that the order in question amounted to cognizance. It was submitted that having regard to the scheme of the Criminal Procedure Code, which required steps to be taken at different stages, the direction

to supply copies on the next date of hearing revealed that the Court was of the opinion that cognizance had to be taken and did so on that date. Admittedly, no sanction existed then and therefore, further proceedings could not have been continued; the petitioner had to be necessarily discharged.

6. Mr. Tewari, learned counsel for the CBI opposed the petition and submitted that the copy referred to in the order dated 13.7.2005 was the copy under Section 173(2) of the report. It was submitted that the order nowhere disclosed application of mind to the facts or issuing notice to the accused, who merely happened to be present in connection with an application moved by him for modification of bail condition. The court did not apply its mind and in fact its reference to lack of sanction and the statement of the Investigating Officer that two months time would be required to obtain sanction gave a clue as to the nature of the order.

7. The narrative shows no dispute about the facts of the case. The charge sheet was filed on 13-7-2005. The accused was present in court, in connection with variation of a condition for bail. The court recorded the statement of the IO that sanction was awaited, and could be expected after two months; the matter was adjourned for supply of copies, to a later date. The question is, whether the court took cognizance. Indisputably, sanction was obtained later. It is contended that if the order is construed as one taking cognizance, the trial is vitiated.

8. "Cognizance" has not been defined in the Prevention of Corruption Act,

1988 or the Code of Criminal Procedure. There is considerable body of case law, now as to its import. In *State of Karnataka v. Pastor P. Raju,*(2006) 6 SCC 728, the Supreme Court held as follows**:**

> *"the word "cognizance" has not been defined in the Code of Criminal Procedure. The dictionary meaning of the word "cognizance" is — "judicial hearing of a matter". The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is R.R. Chari v. State of U.P AIR 1951 SC 207 wherein it was held:*
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> *"... 'taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence'."*
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> ***11.*** *In Darshan Singh Ram Kishan v. State of Maharashtra AIR 1971 SC 2372 while considering Section 190 of the Code of 1898, it was observed that:*
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> *"[T]aking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer."*
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> ***12.*** *In Narayandas Bhagwandas Madhavdas v. State of W.B AIR 1959 SC 1118 it was held that before it can be said that any Magistrate has taken cognizance of any offence under Section 190(1)(a) of the Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter—proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. It was observed that there is no special charm or any magical formula in the expression "taking cognizance" which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. It*

*was also observed that what Section 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. The Court then referred to the three situations enumerated in sub-section (1) of Section 190 upon which a Magistrate could take cognizance. Similar view was expressed in Kishun Singh v. State of Bihar 1993 (2) SCC 16 that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence, decides to initiate judicial proceedings against the alleged offender, he is said to have taken cognizance of the offence. In State of W.B. v. Mohd. Khalid 1995 (1) SCC 684 this Court after taking note of the fact that the expression had not been defined in the Code held:*

*"In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."*

***13.*** *It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out..."*

9. The decision in *Pastor Raju* analyzed the principles relating to "taking

cognizance". The Supreme Court consistently from *Chari,* to the decision in *Khalid* and culminating in *Pastor Raju,* ruled that the expression connotes application of mind, and issuance of an order, after judicial application of mind. In this case, the accused petitioner's presence was merely accidental; no notice was issued for his appearance. The court was informed that no sanction had been granted till that date and that the prosecution expected it to be issued in two months. The court therefore, adjourned the hearing; while doing so, it added, almost in an afterthought, as it were, that copies would be given on the next date. However, the order is unclear as to what copies were to be furnished. The court also did not require the presence of the accused on that specific date; notice for that purpose was not issued. Therefore, although the order was made after a report was filed, it cannot, in my opinion, amount to "taking cognizance" - there was no judicial application of mind.

10. There is, to my mind, yet another reason why this revision has to fail. Section 19(3) of the Prevention of Corruption Act enacts as follows:

> *"19. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*
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> * * *
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> *(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."*

The above provision had been considered in *Satya Narain Sharma -vs- State of Rajasthan* 2001 (8) SCC 607, where the Supreme Court held as follows:

> *"It is thus to be seen that this section provides:*
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> *(a) that no court should stay the proceedings under the Act on any ground, and*
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> *(b) that no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings. "*

The court had also noted that the legislative injunction against recourse to Section 397 was peremptory, and that *sans* a finding of failure of justice, the courts, including High Courts, ought to desist from using revisional power. The court also held that mere overruling of objections on the ground of sanction, would not result in failure of justice, warranting exercise of revisional jurisdiction. The High Court, therefore, has to respect, and follow the legislative mandate and make exceptions, in rare and deserving cases, where manifest failure of justice is demonstrable. No such prejudice or failure of justice has arisen in this case.

11. In view of the above conclusions, I am of the opinion that this revision petition is devoid of merits. It is accordingly dismissed, without order as to costs.

**(S.RAVINDRA BHAT)**
**JUDGE**

**MAY 22, 2007**